



TESTIMONY

of

JAMES T. MARTIN

Enrolled member Poarch Band of Creek Indians

Executive Director, United South and Eastern Tribes, Inc.

before the

HOUSE COMMITTEE ON RESOURCES

regarding

THE FEDERAL ACKNOWLEDGMENT PROCESS

March 31, 2004

Chairman Pombo and distinguished members of the House Resource Committee, on behalf of the Poarch Band of Creek Indians (PBCI) of Alabama, I thank you for the opportunity to provide testimony regarding the Federal Acknowledgement Process. I extend regrets from my Tribal Chairman Eddie L. Tullis who is unable to be here today and has authorized me to speak on behalf of the Tribe.

My name is James T. Martin. I am an enrolled member of the Poarch Band of Creek Indians and the Executive Director of United South and Eastern Tribes, Inc. (USET) an intertribal organization consisting of twenty-four federally recognized Indian Tribes from twelve states in the South and Eastern region of the United States. Prior to my position as Executive Director of USET, I was employed by the Poarch Band of Creek Indians from May, 1979 until June, 1995. During that time, I observed and was a part of the Tribe's endeavor to obtain federal recognition; therefore today I will reflect on our Tribal experience and the current atmosphere surrounding the Federal recognition process.

Federal recognition of Indian Tribes is a formal act that acknowledges the sovereign status of a Tribe and affirms a perpetual government-to-government relationship between a Tribe and the United States. Federal recognition ensures a Tribe the dignity it deserves and the same privileges and immunities enjoyed by other federally recognized Tribes by virtue of their status as Indian Tribes.

Federal recognition has a tremendous effect on Tribes, their surrounding communities, and the nation as a whole. Historically, Tribes have been granted federal recognition through treaties, by Congress, or through administrative decisions within the executive branch. The criteria used was not always clear and often depended on which official responded to the group's inquiry. The Government Accounting Office (GAO) Report GAO-02-49 reports that until the 1960's there was a limited number of requests by groups to be federally recognized and the Department was able to assess these requests on a case by case basis.

PBCI recognizes that Congress has the power to extend recognition to certain groups, but in its infinite wisdom Congress has considered the federal recognition process a complex and tedious one, not to be entered into lightly.

Therefore they deferred most federal acknowledgement determinations to the U.S. Department of the Interior (DOI). The DOI has established a set of regulations standardizing the recognition process and creating an administrative procedure to determine whether particular Indian groups qualify as federally recognized Indian Tribes. The Bureau of Indian Affairs (BIA)/Branch of Acknowledgement and Research (BAR) procedures were established in 1978 as a result of a two-year study by the Congressionally established American Indian Policy Review Commission.

The BAR guidelines are composed of the following seven criteria for recognition under the 25 CFR Part 83 regulatory process:

- (1) The petitioner has been identified as an American Indian on a substantially continuous basis since 1900.
- (2) A predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present.
- (3) The petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present.
- (4) The group must provide a copy of its present governing documents and membership criteria.
- (5) The petitioner's membership consists of individuals who descend from a historical Indian tribe or tribes, which combined and functioned as a single autonomous political entity.
- (6) The membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian Tribe.
- (7) Neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden recognition.

The Poarch Band of Creek Indians is in general agreement with the seven criteria that groups must meet to be granted recognition. However, the length of time involved to receive recognition is increasingly becoming substantial. This is due in part because the workload of the BIA/ BAR staff is substantially increasing. The workload is increasing due to more detailed petitions ready for evaluation and at the same time the number of staff assigned to evaluate the petitions has decreased by 35 percent, from 17 staff members in 1993 and in the last five years averaging no more than 11. GAO Report GAO-02-49 stated that as of November, 2001 of the 250 petitions received, 55 have completed

documentation to be considered by the process with BIA finalizing only 29, recognizing 14 and denying 15. Of the 10 petitions currently in ready status, six of these have been waiting at least 5 years. At the current rate of review, it could take over 100 years to resolve all of the petitions awaiting active consideration. The initial regulations outline a process for active consideration of a completed petition that should take approximately 2 years.

Federal recognition for the Poarch Band of Creek Indians was a slow process beginning in 1975. A petition for recognition was filed in January, 1980 and the Tribe did not receive notice of active consideration until November, 1982. Final Determination for Federal Acknowledgement was published in the Federal Register in June, 1984. Poarch Band of Creek Indians was among the first to be federally recognized through the BAR process when the process should have been timely and costs should have been appropriate. Time and cost have increased even more in the years following. The long time lags and increased costs are a detriment to petitioners. Eric Eberhard, a lawyer specializing in Indian law, stated in a New York Times interview entitled "Would-Be Tribes Entice Investors" on March 29, 2004, that the recognition process that once cost between \$100,000 and \$200,000 now runs in the millions of dollars. A monumental factor in the increased costs is that the political climate at the time of Poarch Band of Creek Indians was totally different than now due to the onslaught of Indian gaming.

The Summary Status of Acknowledgement Cases as of February 10, 2004 compiled by the BAR office reports that 294 petitioners currently await consideration to permit processing under 25 CFR 83. There are 9 active status petitions, 13 ready petitions, 57 resolved petitions, 2 petitions in post-final decision appeal process, one decision in litigation, and 213 petitions not ready for evaluation. The not ready for evaluation petitions include 68 incomplete petitions, 130 letters of intent to petition with no documentation submitted, 9 petitions no longer in touch with the BIA, and 6 with legislative action required. There were 40 petitioners when 25 CFR 83 became effective in October, 1978 and 254 new petitioners since October, 1978.

Compounding the backlog of petitions awaiting review is the increased number of third parties active in the process, the increased number of administrative responsibilities that the BAR staff must assume, and the increased number of lawsuits from dissatisfied petitioners. The increasing amount of time involved in the process will continue to frustrate petitioners. Improvements that focus on fixing the time problems will improve confidence in the process. Money

and politics must not be a concern of a petitioner for federal recognition. BIA resource constraints must not negate the need for thorough review of a petition.

The BAR process was intended to provide a clear, uniform, and objective approach for the DOI that established specific criteria and a process for

- evaluating groups seeking federal recognition in a timely manner. Poarch Band of Creek Indians believe the process could be improved and that the ultimate goal of timeliness could be accomplished with the following changes:
- more resources allotted to the BAR for staffing or resources allocated to the BIA for outsourcing parts of the review process that are fact-finding only
- a definitive list of information that must be submitted by the petitioner prior to the petitioner submitting and receiving a letter of intent
- with affordable technical assistance available to petitioners to assist them in providing a substantial amount of work required to receive the letter of intent and help avoid the continued submission of incomplete petitions
- expanded authority for the Assistant Secretary to review petitions and declare negative determinations on frivolous petitions
- changes in procedures to further insulate BAR staff from outside third party influence to maximize their productivity.

Poarch Band of Creek Indians submits these suggested changes for consideration but the Tribe would reiterate that any changes to the criteria that would significantly impact the federal recognition process should be undertaken only after considerable review and deliberation as was conducted in the initial development of regulations that govern the recognition process to date.

Again, on behalf of the Poarch Band of Creek Indians we appreciate the opportunity to provide testimony on this critically important issue.

I would be happy to respond to questions at this time.